

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NOUR EDDINE GHZIOUNA,

Petitioner,

v.

NEIL CLARK,

Respondent.

CASE NO. C06-1345-TSZ-JPD

REPORT AND  
RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

On September 18, 2006, petitioner, proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his detention by the U.S. Immigration and Customs Enforcement (“ICE”). Petitioner requests that he be released from custody, alleging that he is being held indefinitely, contrary to the mandate in *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). (Dkt. #4). Respondent has moved to dismiss, arguing that petitioner is properly detained under the Attorney General’s discretion under Section 241 of the Immigration and Nationality Act (“INA”), and that petitioner’s detention is neither unlawful nor indefinite. (Dkt. #10).

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1 Having carefully reviewed the entire record, I recommend that petitioner's habeas  
2 petition (Dkt. #4) be DENIED and that respondent's motion to dismiss (Dkt. #10) be  
3 GRANTED.

## 4 II. BACKGROUND AND PROCEDURAL HISTORY

5 Petitioner Nour Eddine Ghziouna is a native and citizen of Morocco. (Dkt. #13 at  
6 L105). On August 21, 1988, he entered the United States at New York, New York, as a non-  
7 immigrant visitor with authorization to remain in the United States for a temporary period not to  
8 exceed six months. (Dkt. #13 at L23). On January 24, 1994, petitioner married Theresa Kaden  
9 a United States citizen, but the couple separated on April 5, 1994. They have one fourteen year  
10 old son in common. (Dkt. #13 at L101-105).

11 On December 21, 1994, petitioner was convicted in the Municipal Court of California, in  
12 and for the County of Fresno, of the offense of carrying a concealed weapon in violation of  
13 California Penal Code § 12025(a). (Dkt. #13 at L85-86). The court sentenced him to a two  
14 year conditional sentence and ordered him to serve 45 days in jail. *Id.* On April 12, 1999,  
15 petitioner was convicted of failing to provide child support in violation of California Penal Code  
16 § 270. The court sentenced him to 36 months imprisonment, suspended on the conditions that  
17 he served 365 days in jail and abide by the terms of parole. *Id.* Petitioner was ordered to serve  
18 an additional 12 days in jail for violating the terms of his parole. *Id.* On May 2, 2002, petitioner  
19 was charged with Possession of a Controlled Substance in Iowa, but forfeited bail when he failed  
20 to show for a court appearance. *Id.*

21 On May 17, 2005, petitioner was charged with child abduction and disobeying a  
22 visitation order in violation of California Penal Code §§ 278.5 and 166(a)(4). (Dkt. #13 at L67).  
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1 According to the allegations, petitioner's estranged wife agreed that their son could spend three  
2 months in Morocco with petitioner's parents between February and May of 2004. (Dkt. #13 at  
3 L55). However, at the end of the three months, petitioner refused to return their son to the  
4 United States. *Id.* Petitioner returned his son to the United States on May 31, 2005, after he  
5 was arrested for child abduction and visitation violation charges on May 23, 2005. (Dkt. #13 at  
6 L38, L41). On August 16, 2005, petitioner pleaded no contest to felony deprivation of custody  
7 and right to visitation in violation of California Penal Code § 278.5. (Dkt. #10, Ex. A). The  
8 court sentenced him to time served and three years probation, including an order prohibiting  
9 contact with Theresa Kaden and their son. *Id.*

10  
11 On June 16, 2005, ICE served petitioner with a Notice to Appear, placing him in  
12 removal proceedings and charging him with removability under INA § 237(a)(1)(B), for  
13 remaining in the United States for a time longer than permitted, and under INA § 237(a)(2)(C),  
14 for being convicted of a firearms violation. (Dkt. #13 at L23). On August 16, 2005, petitioner  
15 was transferred from the Fresno County Jail to ICE custody. (Dkt. #13 at L20).

16 On July 15, 2005, petitioner filed an application for asylum. (Dkt. #13 at L101-105).  
17 On August 18, 2005, ICE determined that petitioner would remain detained pending a final  
18 determination by the Immigration Court. (Dkt. #13 at L20). On September 12, 2005, the  
19 Immigration Judge ("IJ") held a bond redetermination hearing and affirmed ICE's decision to  
20 hold petitioner without bond pending his removal proceedings. (Dkt. #13 at L115). Petitioner  
21 did not appeal the IJ's bond determination to the Board of Immigration Appeals ("BIA").

22 On September 19, 2005, petitioner appeared for a master hearing before the IJ. (Dkt.  
23 #13 at L116). On April 12, 2006, the IJ denied petitioner's applications for asylum, withholding  
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1 Petitioner argues that he is being held indefinitely, in violation of *Zadvydas v. Davis*, 533  
2 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), and that he must be released because there  
3 is no significant likelihood that he will be removed in the reasonably foreseeable future. (Dkt.  
4 #4). Respondent argues that petitioner's removal is "highly foreseeable," and is neither unlawful  
5 nor indefinite. (Dkt. #10 at 9).

6 The post-removal-order detention statute, INA § 241(a)(1), 8 U.S.C. § 1231(a)(1),  
7 provides for the mandatory detention of aliens awaiting removal from the United States for an  
8 initial period of three months. This three months may be followed by an additional three months  
9 discretionary detention during which detention remains presumptively valid. *Zadvydas*, 533 U.S.  
10 at 701. In *Zadvydas*, the Supreme Court explained that after this six-month period, the alien is  
11 eligible for conditional release upon demonstrating that there is "no significant likelihood of  
12 removal in the reasonably foreseeable future." *Id.* The petitioner has the burden of coming  
13 forward with "good reason to believe there is no reasonable likelihood of removal in the  
14 reasonably foreseeable future." *Id.* If the petitioner meets this burden, the government must  
15 produce sufficient evidence to rebut petitioner's showing. *Id.*

16 Here, petitioner's claim that he is being held indefinitely in violation of *Zadvydas* lacks  
17 merit because he has not demonstrated that his removal to Morocco is not significantly likely in  
18 the reasonably foreseeable future. *See Zadvydas* at 701. As indicated in the record, there are no  
19 barriers that exist to prevent ICE from securing travel documents for petitioner's removal to  
20 Morocco. (Dkt. #11). Thus, the only thing preventing petitioner's removal is his Petition for  
21 Review and related stay of removal. Once the Ninth Circuit decides his appeal, ICE will remove  
22 or release petitioner. *See Bequir v. Clark*, Case No. 05-1587-RSM-JPD (Dkt. #23 at 3). Thus,  
23 contrary to the petitioner in *Zadvydas*, petitioner's detention is neither "indefinite" nor  
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1 “potentially permanent.” *Zadvydas*, 533 U.S. at 690-91. Accordingly, petitioner has failed to  
2 make a threshold showing of indefinite detention.

3 In his habeas petition, petitioner asserts in conclusory fashion that he “has not been given  
4 any sort of *individualized* hearing to determine his releasability on bond or on his own  
5 recognizance where such hearing took into consideration the factors of the Petitioner.” (Dkt. #4  
6 at 4). Contrary to petitioner’s claim, petitioner’s bond status was reviewed initially by ICE, and  
7 then by the IJ. (Dkt. #13 at L20, L115). Petitioner had 30 days to appeal the IJ’s custody  
8 determination to the BIA, however, the record does not reflect that petitioner appealed the IJ’s  
9 determination. Petitioner was scheduled for another custody status review on or about October  
10 27, 2006. At that time, the ICE field office director reviewed petitioner’s criminal history, risk of  
11 flight, danger to the community, as well as any documentation submitted by petitioner in support  
12 of his release. Accordingly, petitioner’s claim fails because he does not specify what factors  
13 respondent failed to consider or how he failed to give him an individual assessment.

#### 14 IV. CONCLUSION

15 For the foregoing reasons, I recommend that respondent’s motion to dismiss be granted,  
16 and that the action be dismissed with prejudice. A proposed Order accompanies this Report and  
17 Recommendation.  
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19 DATED this 2nd day of February, 2007.

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21   
22 JAMES P. DONOHUE  
United States Magistrate Judge